

DOC. NO. FST-CV-05-4004360-S (X05)

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|-------------------------------|---|-------------------------------|
| -----X                        |   | SUPERIOR COURT                |
| STATE OF CONNECTICUT          | : |                               |
|                               | : | JUDICIAL DISTRICT OF STAMFORD |
| Plaintiff,                    | : | AT STAMFORD                   |
| v.                            | : |                               |
|                               | : | COMPLEX LITIGATION DOCKET     |
| MARSH & McLENNAN              | : |                               |
| COMPANIES, INC., MARSH, INC., | : |                               |
| MARSH & McLENNAN, INC.,       | : |                               |
| MARSH USA RISK SERVICES, INC. | : |                               |
| d/b/a MARSH USA, INC.         | : |                               |
|                               | : | SEPTEMBER 21, 2005            |
| Defendants.                   | : |                               |
| -----X                        |   |                               |

## **AMENDED COMPLAINT**

### **I. SUMMARY OF THE CASE**

This action seeks redress for Marsh's scheme to rig bids on insurance contracts purchased by Connecticut consumers and to illegally steer insurance contracts to those insurers paying Marsh undisclosed kickbacks. Marsh systematically exploited its position as the largest insurance broker in the world to control insurers' access to Marsh clients wanting to purchase insurance. To gain access to Marsh's clients, insurers made back-door payments to Marsh through hidden contingent commission agreements commonly known as Placement Service Agreements (PSA's). These hidden agreements created an inherent conflict of interest for Marsh between its clients, to whom Marsh owes a fiduciary duty, and the insurers, who were eventually paying Marsh hundreds of millions of dollars in hidden fees.

Moreover, Marsh secretly conspired to protect this corrupt system by submitting false or rigged bids to its clients to provide the illusion of free and open competition. In reality, Marsh had already picked the winner of these sham competitions by identifying which insurer would pay Marsh the most money. Whether the client got the best insurance for their needs was incidental to Marsh maximizing its fees. Indeed, because insurers commonly paid Marsh based on the total amount of premium it placed, Marsh frequently actively worked against its clients' interests by purposefully raising premium prices -- thereby increasing Marsh's own hidden commission payment.

Insurers willingly provided Marsh with rigged or fictitious quotes in return for the prospect of submitting winning bids on future placements. If an insurer refused to play along, Marsh threatened to cutoff that insurer and not allow them to bid on future business. Eventually, however, insurers realized that they could join forces with Marsh to steer more and more business to selected insurers (i.e., those insurers with PSA's) if the insurer simply paid Marsh more money. As a result, insurers began signing generous PSA agreements paying Marsh higher and higher rates of compensation if Marsh increased the total amount of business it placed with the insurer. The insurers' plan worked and Marsh soon began steering more and more business to insurers willing to sign high paying PSA's.

In pursuing these corrupt and anti-competitive business practices, Marsh violated the Connecticut Antitrust Act, the Connecticut Unfair Trade Practices Act, and its fiduciary duties of loyalty and fair dealing to its clients. Pursuant to Conn. Gen. Stat. §§ 35-32, 35-35, 35-38, 42-

110m, and 42-110o, the Connecticut Attorney General, in the name of the State of Connecticut and the People of the State of Connecticut, seeks damages, restitution, disgorgement, and civil penalties for the injuries suffered by Connecticut consumers and the general economy of the State of Connecticut, as well as other injunctive and equitable relief to prevent these corrupt business practices from happening again.

## **II. PARTIES**

1. Plaintiff State of Connecticut, represented by Richard Blumenthal, Attorney General of the State of Connecticut, brings this action pursuant to the Connecticut Antitrust Act, Conn. Gen. Stat. § 35-24 et seq., and, at the request of Edwin R. Rodriguez, Commissioner of the Department of Consumer Protection for the State of Connecticut, pursuant to Conn. Gen. Stat. § 42-110m of the Connecticut Unfair Trade Practices Act (CUTPA).

2. Defendant Marsh & McLennan Companies, Inc. (MMC) is a \$12 billion global business services firm with a principal place of business in New York, New York. At all times relevant to this Amended Complaint, MMC transacted business in the State of Connecticut through its various subsidiaries including Marsh, Inc., Marsh & McLennan, Inc., and Marsh USA Risk Services, Inc. d/b/a Marsh USA, Inc. (“Marsh USA”).

3. Defendant Marsh, Inc. is a subsidiary and operating unit of MMC. Marsh Inc. claims to be “the world’s leading risk and insurance services firm,” with 410 offices around the world and clients in more than 100 countries. Marsh, Inc.’s annual revenues were \$6.9 billion in 2003 and \$7.4 billion in 2004. At all times relevant to this Amended Complaint, Marsh, Inc.

transacted business in the State of Connecticut through its various subsidiaries providing insurance brokerage, consulting and counseling services, including Marsh & McLennan, Inc., and Marsh USA.

4. Defendant Marsh & McLennan, Inc. is a brokerage and consulting corporation with its principal place of business in New York, New York and is a wholly owned subsidiary of Marsh, Inc. Marsh & McLennan, Inc. has offices in Connecticut and is registered with the Connecticut Secretary of State. At all times relevant to this Amended Complaint, Marsh & McLennan, Inc. transacted business in the State of Connecticut by providing insurance brokerage, consulting and counseling services in Connecticut.

5. Defendant Marsh USA is an insurance brokering and consulting corporation with its principal place of business in Hartford, Connecticut and is a wholly owned subsidiary of Marsh & McLennan, Inc.

6. The various Marsh entities alleged above are hereinafter referred to as “Marsh.”

7. Marsh is in the business of providing insurance brokerage and consulting services to corporations, state and municipal governmental agencies, and individuals seeking medical, group life, dental, disability, as well as other insurance products such as property and casualty, and excess liability insurance.

8. Non-party Illinois Union Insurance Company is an insurance company with an office in Chicago, Illinois. Illinois Union Insurance Company does business as and through ACE Financial Solutions, an unincorporated practice group of ACE Limited. ACE Limited is an

insurance company located in Bermuda. Illinois Union Insurance Company, ACE Financial Solutions, and ACE Limited are referred to hereinafter collectively as “ACE.”

9. Whenever reference is made in this Amended Complaint to any representation, act or transaction of any the defendants, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents or representatives while actively engaged in the course and scope of their employment, did or authorized such representations, acts, or transactions on behalf of said defendant.

### **III. HOW THE INSURANCE INDUSTRY WORKS**

10. There are three primary actors in the large scale commercial and governmental insurance industry: consumers, brokers (sometimes called consultants), and insurance companies.

11. Consumers are large private and public employers who must purchase insurance to operate and, occasionally, individuals. To purchase insurance, consumers hire brokers.

12. Brokers are companies with specialized knowledge of the insurance industry and the products insurance companies sell. A broker’s job is to solicit quotes for insurance coverage from insurers, present the insurers’ proposals to the broker’s clients, recommend the best proposal for the client’s particular needs, and represent the client in any negotiations with the insurer. Under Connecticut law, a broker has a fiduciary duty to the client to work exclusively for the client’s best interest.

13. Insurance companies (referred to by brokers as “markets”) rarely sell insurance directly to large commercial consumers. Instead, insurers typically sell through brokers. Thus, brokers occupy a critical position in the marketplace between the consumers needing to purchase insurance and the insurance companies wanting to sell insurance.

14. A common method of selling insurance to businesses is for a broker to solicit proposals on behalf of its client from a group of insurers. When a successful bidder is chosen, the bidder enters into a contract with the consumer for the agreed upon insurance.

15. For this work, a broker generally receives either a (1) flat fee from its client, (2) payment from the client based on a percentage of the premium paid to the insurer, or (3) payment from the insurer which is then disclosed to the broker’s client and deducted from any fee charged by the broker to the client.

#### **IV. MARSH’S CORRUPT BUSINESS SCHEME**

##### **A. Marsh Dominates the Insurance Broker Market**

16. Prior to 1984, the insurance brokerage industry generally included enough brokers to provide adequate competition for the medium and large commercial and public sector markets.

17. Within the last two decades, however, there has been significant consolidation in the brokerage industry because of mergers by key firms. This consolidation has left remaining brokers, particularly Marsh, with considerable market power.

18. Marsh is the largest provider of insurance brokerage and consulting services in the world. Marsh’s brokerage operations have approximately 40,000 employees and in 2004

generated over and \$7.4 billion in annual revenue. Marsh's insurance brokerage and consulting business operates nationwide, including in Connecticut.

19. Marsh has nearly 300 clients in Connecticut, including some of Connecticut's largest and best known companies. Marsh's Connecticut corporate clients include: Bic Corporation, United Technologies Corporation, Carvel Corporation, Ethan Allen Furniture, Kaman Corporation, Timex Corporation, Xerox Corporation, and General Electric Company.

20. Marsh has also been the insurance broker for numerous Connecticut public entities, including, the Connecticut Department of Administrative Services, and the Cities or Towns of Hartford, New Haven, Stamford, Manchester, West Hartford, and West Haven. Marsh was also the insurance broker for several large, publicly supported Connecticut construction projects, including Adriaen's Landing.

21. Finally, Marsh has been a broker for several Connecticut nonprofit entities such as Yale University, Mystic Seaport, and the Save the Children Federation.

**B. Marsh Holds a Position of Trust**

22. Marsh holds itself out as a trusted expert in the analysis and placement of insurance. Businesses and individuals who need insurance retain Marsh to help design an insurance plan that fits their particular needs and to negotiate with insurance companies to get the client the best mix of coverage, service, financial security, and price.

23. Marsh's clients rely heavily on Marsh's expertise when choosing what insurance to buy and how much to pay. Marsh's clients expect, and under Connecticut law, are entitled to

receive, unbiased advice on insurance renewals, whether to switch carriers, and help in keeping insurance premiums as low as possible. Despite these obligations to its clients, Marsh commonly agreed to PSA's that included provisions expressly designed to increase premiums levels and steer business to favored insurers.

24. For its part, Marsh actively cultivated this high level of trust from its clients and worked hard to project an image of undivided loyalty to its clients. According to Marsh's own website, "[o]ur guiding principle is to consider our client's best interest in all placements.... We are our clients' advocates, and we represent them in negotiations. We don't represent the [insurance companies]."

**C. Marsh Exploited Its Position of Trust For Its Own Profit Through Its Global Broking Unit**

25. A critical piece in Marsh's corrupt scheme to increase premiums and commission payments was the creation of Marsh's Global Broking unit.

26. Until the late 1990's, insurers sold their insurance through regional or local broking offices located around the country. Under this system, a regional or local broker negotiated directly with insurers over the price and terms of the insurance eventually sold to the broker's clients. Each one of the broking offices could negotiate its own separate commission arrangement with the insurer effecting only those insurance placements in the individual broker's particular region or local market. Thus, under this system, no individual broker dominated the



national broking market because each broker generally only dealt with regional or local customers.

27. This system changed when Marsh created its Global Broking unit. Global Broking concentrated the market and negotiating power of all Marsh regional and local brokers into a single office. Global Broking's purpose was to negotiate directly with insurers not just on the business of local or regional Marsh clients, but on behalf of all Marsh clients. Thus, if an insurer wanted to place insurance with any Marsh commercial customer, they had to negotiate with Global Broking.

28. Marsh purposefully created, in essence, a centralized "toll booth" through which all insurers doing business with Marsh would have to pass before they were able to place insurance with any Marsh client. This toll booth gave Marsh tremendous market leverage to dictate commission arrangements to the insurers. If insurers did not cooperate with Marsh by agreeing to high paying PSA's, price fixing, and false quotes, Global Broking had the power to cut off that insurer not just from a few Marsh clients, but from all Marsh clients. Marsh took full advantage of the market power that the Global Broking system provided.

#### **D. Marsh Puts Its Corrupt Scheme into Operation**

29. Like many brokers, Marsh gets paid for its work through a flat fee from its client, or a payment from the client based on a percentage of premium paid.

30. What Marsh generally did not disclose, however, is that Marsh also had separate, back-door agreements with many insurance companies that paid Marsh hundreds of millions of

dollars annually for the insurance Marsh recommended to its clients. These arrangements – variously known as “special producer agreements,” “quality business incentives awards,” “preferred broker compensation plans,” “competitive bonus programs,” “extra compensation agreements,” “placement service agreements” (“PSAs”), and “market service agreements” (“MSAs”), – are known commonly at Marsh as “overrides” or “PSA’s.” In many cases, the payments under these agreements operated as nothing more than kick backs for steering business to a particular insurer.

31. The terms of these hidden agreements varied, but typically they rewarded Marsh with annual payments based on (1) the total amount of insurance premium placed with the insurer for the year; (2) the “persistency rate,” i.e., the rate at which Marsh convinced its clients to renew or maintain their existing policies with the insurer; or (3) the profitability of the insurance placed by Marsh with the insurer.

32. For example, a 2003 PSA agreement with AIG Risk Management, Inc. (AIG) provided Marsh with a bonus payment of 1% of all renewal premiums if Marsh convinced 85% of its AIG insured clients to renew with AIG. If the renewal rate was 90%, Marsh received 2% of the renewal premiums. If Marsh got 95% of its AIG insured clients to renew, Marsh got 3% of premiums. Similarly, the 2003 PSA for Liberty Mutual Insurance Company (“Liberty”) paid Marsh 2% of Liberty premiums on the first \$50 million of premium. If Marsh could steer \$65 million in premiums to Liberty, then Marsh’s percentage doubled to 4% on the entire \$65

million. If Marsh could hand Liberty more than \$65 million in premiums, then Marsh was paid 5% on those premiums above \$65 million.

33. These types of PSA arrangements represented a direct and unavoidable conflict of interest between Marsh and its clients because such agreements had the purpose and effect of encouraging Marsh to keep premium prices high so that Marsh could meet its PSA goals.

34. PSA agreements became a significant source of income to Marsh. Marsh has received at least \$1.7 billion in the U.S. from its PSA agreements since 2001 and perhaps as much as \$3 billion worldwide. Most, if not all, of this money was pure profit to Marsh. In 2003, Marsh reported that approximately \$847 million of its earnings were attributable to PSA income, or more than half of the \$1.5 billion in net income that Marsh reported in 2003. For the first three quarters of 2004, Marsh took in \$541 million in PSA income.

35. The clear purpose and effect of PSA agreements was to secretly and improperly shift Marsh's loyalty from its clients, to whom Marsh owes a fiduciary duty, to the insurer, or even to Marsh itself, in the pursuit of more and more PSA revenue. Instead of recommending the insurance that was best for its client, Marsh frequently recommended the insurance policy that brought Marsh the biggest override payment, regardless of whether that insurance was best for the client. What was best for Marsh's client was secondary, or forgotten altogether. As one Chubb insurance Executive Vice President put it to Marsh: "Under any of our proposed [PSA] scenarios, you do handsomely if we do handsomely.... We need a deal where you have skin in the game, and are accountable for delivering what you clearly can deliver, if you are so

inclined.” In sum, Marsh was no longer working for its clients. Marsh was working for the insurance companies.

36. For example, a Marsh broker wrote in 2003 when discussing renewal of a PSA agreement: “I agree we should have a good year with ARCH [insurance] but that all depends on their appetite, coverage provided and how much they pay us. We need to place our business in 2004 with those that... pay us the most.”

37. Marsh’s inherent conflict of interest was particularly apparent when Marsh was close to the level of business needed to trigger a bonus payment. Thus, a Marsh broker advised her staff in 2001: “Please provide Cheryl with twenty accounts that you can move from an incumbent market to PRB. You must make sure that you are not moving business from key PSA markets. This market has given us an extension on the expiring PSA which is Net accounts 12.5%[,] [O]n accounts with commission we get an extra 5%. This could mean a fantastic increase in our revenue.”

38. Conversely, if Marsh thought it could not earn a commission, it quickly stopped promoting an insurer’s products – again without considering what may have been in the best interest of its clients: “We are writing off our biz with CNA for the rest of the year. We will never get to this [PSA] band and will be focused elsewhere. Assume our payout will be less than that projected.”

39. Insurers found providing bonuses and overrides to be a necessary element of dealing with Marsh. As one Aetna manager stated: “With Marsh if we don’t have an override

we should not call on them. . . . they flat out told us if we want to write business we need to have an override end of story. . . . without them we are letting business walk away.” Another underwriter at Arch Insurance complained after losing a bid to provide coverage for Ozark Motor Lines: “It’s not right, Katie, I tried hard to work with you and in the end, without a PSA, its what’s good for Marsh and not the client that wins out.”

40. Insurers who refused to play along with Marsh found themselves shut out by Marsh. “We are now being heavily penalized by Marsh for not having the [PSA] agreement signed. We are being systematically excluded from . . . placements that we would otherwise like the chance to write.”

41. Nor was Marsh shy about making sure the insurance companies got the message. Discussing how to arm wrestle insurer C.V. Starr & Company into signing a PSA, a Marsh broker wrote: “We need to work on moving business to demonstrate the control we have in order to make a strong argument for a PSA.” Still another Marsh broker wrote in 2003 during Marsh’s negotiations with ACE for a new PSA: “I made it clear that if ACE wants us to meet significant premium growth targets then ACE will have to pay “above market” for such stretch.... We will be candid and absolutely honest about where their PSA stands relative to similar partners in terms of both %’s and growth thresholds. We will also be VERY CLEAR to the ACE product line managers what the impact will be if they are below market in terms of PSA.” (emphasis in the original).

42. By contrast, insurers who played along were rewarded by Marsh. A 2003 internal Marsh marketing presentation could not have been more clear: “We must reward carriers who elect to collaborate with Marsh.”

43. Even for those insurers who did play along, Marsh still tried to wring every last dollar out of the system. Wrote one Marsh broker in 2002, “some PSA’s are better than other’s. Shortly, we will tier our markets and I will give you clear direction on who w[ ]e are steering business to and who we are steering business from.” Indeed a “tiering report” was later circulated to Marsh executives listing insurance companies as belonging to “tiers” depending on how lucrative their PSA was. The instruction given to Marsh brokers was to “monitor premium placements” to insure that Marsh got the “maximum concentration with Tier A & B” companies, i.e., the companies that paid Marsh the most.

44. This message got through loud and clear to Marsh employees. Wrote one Chicago Marsh broker on her 2003 annual self appraisal: “95% renewal on all business.... Renewed large account with PSA market to demonstrate our willingness to continue our relationship. Moved a number of accounts to PSA market for the sole reason to demonstrate partnership.” Under the “Financial Success” heading of her evaluation the broker listed these accomplishments: “Renewed our second largest HMO (\$6m) with our top PSA market. Was able to avoid going out to bid in a challenging situation. Moved a large account (\$1.5m) from a non-PSA market to our top PSA market and doubled our revenue. This was done to send the message that we prefer to write business with our partners (PSA markets).”

**E. Insurers Join Marsh's Scheme By Steering Insurance Contracts Through High Paying PSA's**

45. Eventually, insurance carriers realized they could channel Marsh's greed for their own benefit. Insurers promoted PSA agreements with higher and higher commission payments to Marsh in return for placing more business with the insurer. By using these highly lucrative PSA agreements, insurers hoped to influence, or "incent," Marsh brokers to sell their products over that of other insurers.

46. This scheme is graphically illustrated in two email's from Liberty Mutual Insurance. On November 2, 2002, a Liberty Mutual executive wrote to his colleagues:

back in april we said; results are strong with marsh, we want/need to diversify away from marsh, marsh needs us more than we need marsh, no need for a psa.

now in november; our results with marsh are bad and getting worse, they are the biggest broker in the world, they have and control the largest book of 'main thing' business, they control most of the shared and layered business. we want/need to diversify but marsh will always be our biggest producer, placing brokers are steering business away from us, we are the market of last resort and only seeing the low priced junk, we need a psa.

47. Thus, on January 18, 2003, the same Liberty Mutual executive wrote back to his colleagues in an email titled "2003 marsh psa:"

we agreed to a very, very attractive and lucrative plan and expect preferential treatment in return. we will be tracking monthly and talking to and/or meeting with marsh monthly to assure the psa is motivating the intended behavior and results....

the price of poker has just gone up and we will demand the appropriate consideration from marsh.

48. The insurers' plan worked. "Marsh [is] definitely influenced by these arrangements," wrote one insurer. A Chubb Executive Vice President wrote to a Marsh manager: "Our definition of 'incentive' is that you are financially motivated to act in Chubb's best interests."

49. In a pitch to Marsh, the senior executive at OneBeacon Professional Partners, a White Mountains Insurance Group entity, was equally clear:

We continue to be pleased with the Marsh relationship and believe that we have made terrific progress in aligning our interests. As we move into 2004, we believe that OneBeacon Professional Partners product portfolio of Medical Professional Liability, Managed Care, Errors and Omissions and Provider Excess should position us as one of Marsh's more important and strategic partners.... we only have a PSA for the Medical Professional Liability.... we believe that as your responsibility and or influence extends to the other products we can expect the same kind of effective trading relationship that we have experienced with the medical. As such we are interested in structuring a global PSA arrangement that recognizes key production and retention objectives at both the individual product and facility level....

We are prepared to significantly enhance the amount of compensation you are likely to receive under the current 2003 PSA.... Our motives should be pretty transparent: we want to provide you with additional incentives to influence the outcomes of both the [medical professional liability] and the managed care and we are prepared to pay a level of compensation on the managed care that we would otherwise not be required to pay.

50. The insurers' plans produced the results they hoped for. In 1999 a Marsh broker wrote "We should be feeding AIG on excess/umbrella. GBML's is part of the GB excess PSA deal. It is VERY lucrative. I hope Chicago GB is steering business to them?" Indeed Marsh did steer business to AIG and AIG noticed. Wrote one AIG executive in 2002, "We continue to get



the “inside track” on all quoted business. This did not exist prior to having the PSA with Marsh .... I believe that [the new PSA] will incent Marsh to not only grow with us, but to do so both with renewals and new business.”

**F. Marsh Tried Hard to Conceal Its Corrupt Practices**

51. As PSA payments and other “bonus” income grew, brokers became concerned that their clients, who were also paying Marsh a commission for their professional services, would learn of the back-door payments. As early as 2001, an Aetna e-mail said of Marsh “[a] BIG issue we will have with the [large brokers] is ‘what do we do with those accounts where we are not currently paying any commissions (client is paying them directly) . . . plus the issue of these monies now possibly showing up on a [government reporting form].”

52. Similarly, a Marsh broker in Texas wrote in reference to AIG: “This is an “A” mkt [one of Marsh’s most profitable] and we need to push business there. Let me know if you have problems and we can elevate them up the ladder and hopefully get the deals done.” A second Marsh broker in New York cautioned: “Let’s be careful about labeling market’s via email. Prefer managers speak to staff directly.” Then apparently unable to follow his own advice, the New York broker added: “Thanks for pushing. We need more of that.”

53. Federal law requires private employers to disclose all compensation paid to brokers in connection with those employers’ purchase of group insurance for their employees. This information must be reported on Schedule A to the “Form 5500” and filed by the employer

for these “ERISA” plans with the United States Department of Labor and Internal Revenue Service.

54. An employer typically does not know how much the insurer paid the broker. As a result, the insurer frequently prepares the Form 5500 on behalf of the employer. In the absence of disclosure elsewhere, the Form 5500 is the employer’s only opportunity to find out what the insurer paid the broker. Hence, if PSA payments are not properly disclosed on the Form 5500, the employer and ERISA plan beneficiaries will never know about the payment.

55. Brokers like Marsh tried hard not to disclose their secret payments on the Form 5500s. At a meeting between brokers and insurers in September 2003, brokers indicated that they preferred “the expenses/funding not appear on the 5500 form.”

56. Marsh’s subsidiary, Mercer, complained about one insurer’s bonus program agreement in particular because it did not sufficiently conceal PSA commissions. Mercer stated that it had been told that “the ‘2004 Producer Administrative Agreement’ would be the type of document we would want if we did not want to have client-specific, disclosed compensation showing up on [the Form 5500s]. In fact, we don’t want it appearing on [the Form 5500s] since we have communicated to all our clients that overrides are used to offset certain costs of doing business which [are] common to all of our client relationships.” Mercer added that having bonus commissions on the 5500 “is not ideal for us because overrides and regular commissions might be combined on one amount, raising questions from clients on why our commission

disclosures are less than [the Form 5500] commission. . . . Is this a requirement that is set in stone or not? This could be a potential deal-breaker for us. . . .”

57. Insurers understood what Marsh was telling them. Wrote an Aetna employee, “we will only break into the large preferred books [of business] when we put some bucks on the table.... Me thinks we need to start getting more creative if we are to suck that Life and Disability business away from the Preferred Brokers.” (emphasis in original). As a result, insurers began complying with Mercer’s request and introduced non-reportable bonus agreements. For example, Aetna informed Mercer: “The full amount will be 5500 reportable. . . . If this does not work, we can provide alternative options, such as a producer administrative agreement....”

58. Marsh took Aetna up on its suggested “alternative option” to such an extent that Aetna employees complained “[w]e are encouraging our Producers to be paid MORE off of the 5500. I thought it was [the company’s] position to have bonus reportable.”

59. Brokers like Marsh made their position clear. They wanted insurers to comply with their efforts to conceal their hidden bonus payments. The brokers’ efforts paid off.

60. Soon Marsh and other major brokers were all receiving checks clearly identified as non-disclosed on the Form 5500.

**G. Consumers Pay For Marsh's Corrupt Business Practices**

61. The money to pay for Marsh's undisclosed bonuses had to come from somewhere. Ultimately, Marsh and the insurance companies came to the same conclusion: secretly pass the cost of hidden bonus payments to consumers in the form of higher premiums.

62. In fact, Munich American Risk Partners, a division of American Reinsurance, maintained a separate premium schedule of higher prices for insurance placed with Marsh clients because of the contingent commissions it was forced to pay Marsh. Wrote another insurer: "Every program with marsh is quoted with a cost built in to cover this [the PSA] component. It is generally .5% to > .75% of total booked premium per transaction."

63. Thus, the losers in Marsh's scheme were consumers. Consumers who paid a premium that, unknown to them, included an amount for Marsh's secret commission. Consumers who paid inflated premium prices because instead of negotiating with insurers to reduce premiums, Marsh was actively increasing premiums so it could meet the premium target set in its PSA agreements. And, finally, consumers who were fraudulently induced to purchase inferior insurance because of Marsh's misrepresentations.

64. Among those damaged consumers around the nation are nearly 300 Connecticut companies and organizations that were Marsh clients from 2001 through 2004 and on which Marsh earned a secret commission.

**V. MARSH'S SCHEME INJURED CONNECTICUT CONSUMERS**

**A. Marsh Engaged in Bid Rigging Against Connecticut Consumers**

65. An integral part of the corrupt PSA system developed by Marsh was the systematic rigging and manipulation of insurance contract bidding in violation of Connecticut law.

66. Marsh's bid rigging and bid manipulation was done to protect Marsh's favored insurers from losing valued business to their competitors, thereby giving Marsh the best chance to steer the insurance business of its clients not to the insurer who might offer the best product for the best price, but to the insurer that would pay Marsh the most.

67. The system worked like this: When a Marsh customer wanted to purchase insurance or renew insurance it already had, Marsh brokers decided which insurer they wanted to place the insurance with and at what price. For renewals, Marsh's price typically represented a substantial increase in the previous contract's premium.

68. Marsh's decision on who would win the placement was typically embodied in a "broking plan" drafted by Marsh brokers. Once Marsh set the broking plan, all insurers were expected to fall into line to ensure the chosen carrier won the "competition." For example, wrote one ACE employee about a Marsh plan: "This is another protection job by NY.... Our rating has risk at \$890,000 and I advised [Marsh] that we could get to \$850,000 if needed. Doherty [a Marsh broker] gave me song & dance that game plan is for AIG at \$850,000 and not to commit our ability in writing!"

69. Marsh did not like not fulfilling its broking plan. Wrote a Marsh broker: “Our supposed COLLEAGUES in Zurich, acting not on my instructions but in a direct dialogue with CA have a quote from Swiss Re.... Per broking plan, Swiss Re was not to quote on this layer not to mention that they have come in below broking plan pricing targets.... Now that this got opened up, Swiss Re have come in below plan and left money on the table. We need to talk this afternoon with Kevin Daly on how we can salvage this.” (emphasis in original).

70. Nor was this corrupt system pursued by just a few Marsh employees. A review of Marsh documents shows that at least 50 Marsh employees from Marsh offices around the country participated in or had knowledge of price fixing, B-quotes, steering, and other fraudulent bidding practices.

71. To minimize the chances of not fulfilling its “broking plans,” Marsh routinely solicited and received from insurers fraudulent bids known as “B-quotes.” B-quotes provided Marsh customers with the illusion that their insurance placement went through an open and competitive bid process when in fact that was not the case. As one Marsh broker succinctly described the B-quote system in a placement where the Marsh game plan was to protect Chubb, “A ‘B’ would be a quote from AIG which is higher in premium and more restrictive in cover[age] thus supporting the Chubb quote.”

72. An added benefit to Marsh of its bid rigging scheme was the artificial inflation of premium rates because the premium rates were being set by Marsh, not the competitive market. Higher premiums translated into higher bonus payments for Marsh under its PSA agreements.

Insurers profited as well. Thus, in many cases, consumers were paying twice for Marsh's corrupt business practices. Consumers paid once when Marsh's hidden bonus was secretly folded into the premium charged to the customer and once again when the customer paid a higher basic premium because Marsh failed to make insurers genuinely compete for Marsh's clients' business. Of course, Marsh customers were already paying Marsh a third time in the form of Marsh's original fee to the client for supposedly unbiased guidance and expertise in placing the customer's insurance.

73. These corrupt Marsh practices directly harmed Connecticut consumers, including, the following Connecticut businesses.

MassMutual/Cornerstone Real Estate Advisors, Inc.

74. MassMutual Insurance hired Marsh to find an excess liability policy in 2002 and 2003. MassMutual is based in Connecticut and Massachusetts and two-thirds of the sought after coverage was for Cornerstone Real Estate Advisors, Inc., based in Hartford. After supposedly soliciting competitive bids from several insurers, Marsh quoted MassMutual a premium of \$610,000 from MassMutual's existing carrier, St. Paul. Marsh's quote was approximately a 20% increase over MassMutual's previous year's premium. When MassMutual's risk manager questioned the rate increase, Marsh brokers assured him that was the best price they could obtain.

75. In fact, Marsh had rigged the bid process. Wrote Marsh Broker Omar Portieles to an XL America Insurance employee, "regarding Mass Mutual. We would appreciate a quote on

this account in order to protect the incumbent, St. Paul. St. Paul have quoted a lead 25 x P for \$610,000.”

76. Fortunately, MassMutual’s risk manager took the initiative and, doing the job Marsh was being paid for, solicited a competitive quote of only \$500,000. Marsh immediately changed its story and dropped St. Paul’s bid to match the one found by MassMutual.

77. Nor was this the first time Marsh had manipulated MassMutual’s bids. In 2002, Marsh chose St. Paul to get the “first shot” at meeting Marsh’s “target pricing” while expressly relegating other carriers to “back-up” status. The result was another approximately 20% increase in premium for MassMutual.

Talcott Realty Investors, LLC

78. In 2003, Talcott Realty Investors, LLC hired Marsh to place an umbrella insurance policy. Talcott Realty is a real estate investment company owning commercial properties throughout Connecticut, including the Gold Building in Hartford. Like MassMutual, Talcott Realty was paying Marsh to find the best coverage at the best price. But again, Marsh failed to solicit genuine bids on behalf of Talcott Realty. In fact, Marsh simply wrote the incumbent carrier, Chubb, and asked “let me know your thoughts regarding how much of an increase you are looking for on this renewal.”

79. Mr. Portieles then wrote again to the same XL America employee he spoke to regarding MassMutual’s bid and asked her to be ready to submit a “back up,” or B-quote to



support Chubb's lead quote. Wrote Mr. Portieles, "Please note that you are back up for Chubb on the lead. I'll let you know if we need you on this, but I really don't think we will."

80. The Chubb quote Marsh obtained was \$60,000, a 20% increase over Talcott Realty's previous premium. Talcott Realty principals questioned the increase, but in the end trusted Marsh's false representation that Marsh had approached XL and another carrier "to ensure that the pricing ... was in line with the rest of the market." In fact, Marsh had approached XL simply to protect Chubb's inflated quote.

#### Fidelity National

81. Fidelity National Financial, Inc. (Fidelity National) provides software, financial products, and insurance to the real estate and financial services industry. Fidelity National claims nearly one-third of the US market in title insurance policies. Fidelity National operates through underwriters like Fidelity National Title Insurance Company, Chicago Title Insurance Title, and Ticor Title Insurance, all of whom have offices in Connecticut.

82. In 2003, Fidelity National hired Marsh to place a number of tiered umbrella liability policies. As usual, Marsh put together its broking plan which involved four layers of stacked coverage from different carriers and called for a total premium increase of 23%. The lead insurer, St. Paul, submitted a quote of \$270,000, which was even higher than Marsh's prearranged "target" premium of \$220,000. Marsh, however, did not turn down the opportunity to make more money from its clients. Marsh broker Robert Sterns instructed Marsh Broker April Greenwood, "Can you get a B from Zurich. Client will be binding with St. Paul at \$270,00 ....

\$325,000 should work.” One day later, Zurich obliged Marsh and quoted St. Paul’s layer at \$360,000.

83. In the end, Marsh did even better than it expected. Fidelity National’s expiring premium for the four layers of coverage was \$443,000. Marsh’s initial broking plan called for an increase to \$545,000. Fidelity National ended up renewing at a total of \$620,000, a 40% increase in premium. As Mr. Stearns noted in confirming the final placement, “this is a commission placement.”

Hubbell Incorporated

84. In the Fall of 2003, Hubbell Incorporated (“Hubbell”) hired Marsh to place its excess liability insurance. Hubbell engineers, manufactures and sells electrical and electronic products for a variety of industrial, telecommunications, utility and residential uses and is located in Orange, Connecticut. Marsh requested that Hubbell provide detailed information on its business, but failed to use that information to seek competitive bids from insurers.

85. Instead Marsh set up a phony marketing meeting with insurers like AIG in order to fool Hubbell into thinking that Marsh was actually seeking competitive bids. In fact, Marsh contacted AIG and, according to AIG, told AIG that “this is not a real opportunity” because Marsh wanted to keep the business with Hubbell’s existing carrier, Zurich American. AIG was “just there in case [Zurich] defaulted.”

86. Marsh also wanted AIG to make Zurich’s quote look good. Marsh asked AIG to bid \$900,000 for the Hubbell coverage as against Zurich’s expected bid of \$750,000. AIG

obligingly submitted a false quote for \$900,000. Hubbell ended up renewing with Zurich as recommended by Marsh for \$782,000.

#### Kaman Corporation

87. In 2001, Kaman Corporation (“Kaman”) hired Marsh to place its excess casualty insurance. Kaman is a diversified manufacturer producing musical instruments, helicopters for military and civilian use, and a variety industrial products, such as bearings and motion control products. Kaman is based in Bloomfield, Connecticut.

88. When Marsh started the placement process it warned Kaman that its premium might increase by as much as 40% because of a “firming” in the insurance marketplace for excess casualty insurance. Thus Marsh recommended Kaman purchase its primary layer of excess casualty insurance for \$250,000, a 35% increase over the previous year’s premium. Marsh’s recommendation for Kaman’s overall umbrella coverage was a premium increase of 48%. Kaman trusted Marsh and purchased the insurance at Marsh’s recommended prices.

89. In fact, the increases in prices paid by Kaman had little to do with the competitive marketplace. A Marsh broker wrote that he knew the winning bid from St. Paul “could’ve been lower.” What had actually happened was that St. Paul “quoted higher than the target to purposely give [Zurich American] the opportunity to hit [the target premium] and not undercut [Zurich].” However, Marsh brokers apparently became confused about their own game plan and which insurer was supposed to “get[] the protection” of Marsh’s corrupt brokerage operation. As a result, St. Paul’s inflated bid was accepted by Kaman rather than Zurich’s inflated bid.

### Bridgeport Hospital

90. In 1999, Bridgeport Hospital hired Marsh to place its umbrella insurance. Bridgeport Hospital paid Marsh to find the best coverage at the best price. Again, Marsh failed to meet its fiduciary obligations to its client and rigged the bid for Bridgeport Hospital's insurance.

91. On September 14, 1999, Nicole Michaels of Marsh wrote Mark Manzi and Joshua Bewlay of Marsh asking, "tell me what to do with the pricing" on Bridgeport Hospital's insurance placement. Ms. Nichols offered that she intended on having insurer Zurich American submit a non-competitive quote in order to support the bid of Marsh's preferred insurer, AIG.

92. That was exactly what happened. Marsh, as usual, recommended Bridgeport Hospital accept an increase in premium. Bridgeport Hospital questioned why premium should increase when the risk being insured had not increased. Mr. Bewlay wrote to Ms. Nichols that he was going to make a phone call "to protect AIG," and to find out whether his client's apparently inconvenient opposition to a price increase "is real or b.s." One day later, on September 15, 1999, Zurich American submitted a quote that was intentionally higher than that being offered by AIG. Bridgeport Hospital renewed its policy with AIG at the increased premium suggested by Marsh.

### Hexcel Corporation

93. Hexcel Corporation is a leading manufacturer of carbon fiber and structural fabrics, fiberglass electronic materials, and other composite materials. Hexcel is located in

Stamford, Connecticut. In 2001, Hexcel hired Marsh to place its umbrella liability insurance. Hexcel expected and paid Marsh to solicit the best policy for their company at the lowest price.

94. Instead, Marsh actively worked against Hexcel's best interests. First, Marsh's original "game plan" called for a 28% increase in premium from \$136,500 to \$175,00. Then Marsh solicited and received fraudulent quotes to support their inflated premium from Liberty Mutual (\$275,000) and Zurich American (\$210,000).

95. Zurich was perhaps most interested in helping Marsh because Marsh had already selected Zurich to provide the next layer of coverage for Hexcel at a 20% increase in premium. When Zurich suggested that they could cut Marsh's suggested increase if Marsh simply reduced its commission slightly, Marsh declined and quoted Hexcel the higher premium. In the end, Hexcel purchased its primary layer of 2001 umbrella insurance from Zurich for \$162,500, a 20% increase over the previous year.

96. Perhaps most disturbing is that Hexcel likely should not have paid any increase in premium. When Marsh first began work on Hexcel's renewal, a Marsh Client Advisor suggested Marsh's "game plan" of increasing Hexcel's premium by 28% seemed excessive. The Marsh Client Advisor wrote Marsh brokers including Joshua Bewlay that she thought St. Paul would quote Hexcel's business at no increase at all. St. Paul was never contacted and Mr. Bewlay was tasked to explain the Marsh facts of life and to "discuss with the [client advisor] the issues of competition with St. Paul and pricing in general."

97. On February 15, 2005, Mr. Bewlay plead guilty in New York Supreme Court to one felony count of fraud in his work as a broker with Marsh. Mr. Bewlay told the New York Supreme Court

Beginning in approximately 1998 and continuing through approximately 2003, I along with others at Marsh directed the solicitation of losing quotes from various insurance companies for excess liability insurance for Marsh clients. I personally solicited losing quotes on a number of occasions.

Unknown to Marsh clients I along with others at Marsh and at the various insurance companies who participated in this conduct, shared the common purpose of ensuring that the client would select the carrier, typically the incumbent that Marsh had predetermined should win the business. The B quotes were solicited and obtained related to and as part of this common scheme and the scheme caused more than one client, one Marsh client to obtain more expensive and/or less favorable insurance coverage.

98. Similarly, on February 24, 2005, Kathryn Winter plead guilty in New York Supreme Court to one felony count of fraud in her work as a broker with Marsh. Ms. Winter told the New York Supreme Court

I and others at [Marsh] Global [Broking] participated in a scheme with individuals at various companies including AIG, ACE, [and] Zurich. The primary goal of this scheme was to maximize Marsh's profits by controlling the market and protecting incumbent carriers when their business was up for renewal.

During this period of time I and others at Marsh regularly instructed non-incumbent carriers to submit non-competitive bids for insurance business that I believe (a) were higher than appropriate and more restrictive in coverage terms than bids provided by incumbent carriers (b) were designed to insure that the incumbent carriers would win certain business and (c) resulted in clients being deceived by the bidding process.

On numerous occasions non-incumbent insurance companies complied with these requests by submitting such quotes to Marsh which Marsh in turn showed to its clients. Pursuant to this scheme I intentionally engaged in deception and intentionally caused non-competitive quotes to be conveyed to Marsh clients under false and fraudulent pretenses.

**B. Marsh Conceals A Kick Back from the State of Connecticut**

99. On or about April 10, 2001, the Connecticut Department of Administrative Services (“DAS”) sought proposals from insurers to underwrite a loss portfolio program to cover a group of State of Connecticut workers’ compensation claims. The loss portfolio program was intended to transfer 678 existing workers’ compensation cases to a third party insurer.

100. The purpose of the loss portfolio program was to permit the State of Connecticut, which is self-insured, to pay an insurance company to assume responsibility for paying the workers’ compensation claims as well as the administrative duties associated with those claims.

101. As an initial step in the process, DAS needed to identify a broker with the requisite experience to represent DAS in finding a financially sound and qualified insurer. To help with this process, DAS hired MRM Consulting, Inc. (“MRM”) and prepared a Request For Qualification (RFQ). The State’s RFQ sought detailed information from potential brokers and specifically required disclosure of the broker’s commission.

102. Two brokers responded to the April 10, 2001 RFQ: Marsh and Hagedorn & Company (“Hagedorn”). In its RFQ response, Marsh trumpeted its reputation, stating: “Marsh has tremendous resources for strategic planning, design and benchmarking of the program features that best address the needs and characteristics of the State of Connecticut.” Marsh

continued, citing its “greater depth of experience” and concluded that “Marsh [is] position[ed] to achieve the best possible solution . . . .” Marsh made clear that “we are the only business partner that can see the State through this – every step of the way.”

103. Marsh initially sought compensation from DAS for its services based on a percentage of the premium, which would have amounted to a commission in excess of \$1,000,000. DAS rejected this approach and instead insisted on paying Marsh a flat fee. After a brief round of negotiations, Marsh agreed to accept a total fee of \$100,000 to be paid by the State.

104. On August 24, 2001, DAS issued a Request for Proposal (RFP). The RFP directed brokers to identify their preferred insurance companies from whom they intended to secure quotes. The RFP stated explicitly that the successful broker would be paid a flat fee of \$100,000 by the State. In its RFP response, Marsh identified ACE as its preferred insurer.

105. A material element of the transaction was to separate the cost of the insurance from the cost of obtaining that insurance, *i.e.*, the broker’s fee. To ensure that this requirement was adhered to, DAS expressly stated in its RFP that “Payment of broker commissions shall not be part of the insurers premium.”

106. DAS officials involved in the negotiations made it clear that they needed to separate the two parts of the transaction. This structure was necessary to ensure that the maximum number of workers’ compensation cases were transferred for the amount of premium the State was authorized to spend. Indeed, the State and ACE ultimately engaged in difficult



negotiations over the number of claims ACE would accept for the \$80 million the State had allocated for the deal. In the end, ACE only agreed to accept responsibility for 660 workers' compensation cases for the \$80 million premium, not the 678 originally called for in the State's RFP. Additionally, by requiring in the RFP that only the State pay Marsh, the State made it clear that Marsh was working for the State. Marsh was the State's insurance broker and the State expected unbiased advice as to which insurer would best meet the State's goals for the loss portfolio program.

107. DAS directed Marsh and Hagedorn to seek quotes from their preferred insurers.

108. On October 31, 2001, Marsh provided the State with ACE's a bid for the loss portfolio program. ACE's bid (submitted through ACE Financial Solutions) specified that "[t]his Quotation is net of brokerage commission." Despite this representation, a portion of the State's premium ultimately went to pay Marsh an additional hidden fee.

109. On November 7, 2001, a Marsh broker wrote that he had "planted the seed" and had begun soliciting an additional hidden fee from ACE: "I made a light hearted gesture on the side to ACE about their tendencies to pay us a contingency on the "back end" of the deal...."

110. Although ACE did not immediately agree to Marsh's request for a hidden fee, the prospect that a fee would eventually be paid encouraged Marsh to violate its fiduciary and contractual obligations to act only in the State's best interest. ACE wanted to motivate Marsh to recommend to the State that ACE was the most qualified insurer for the loss portfolio program, even if that was not the case. Indeed, the Marsh broker who solicited the fee was aware of

“ACE’s tendencies” to pay back end fees and thus resolved “to get the deal done first” in order to make a hidden fee possible.

111. Additionally, on November 6, 2001, Hagedorn contacted MRM to warn that ACE had suffered substantial losses in the September 11, 2001 terrorist attacks. In a fax to MRM, Hagedorn asked if there was any way to let the State know that, according to a Morgan Stanley Analysis Report: “All Rating Agency’s[sic] Standard & Poors, Moodys, Fitch, have taken action on ACE & issued a ‘URN’ – under review with Negative Implications.” (emphasis in original). Hagedorn’s fax added that, according to an insurance executive, ACE “is broke, they only have good will.” (Emphasis in original).

112. For its part, Marsh was determined to “get the deal done” and thus never informed the State of ACE’s financial condition. Instead, Marsh continued pushing the State to select ACE, even though Marsh knew that the State’s decision to choose an insurer would be materially effected by the insurer’s financial strength.

113. On November 14, 2001, the State agreed to the loss portfolio insurance contract with ACE (through Illinois Union Insurance Company) and sent a check to Marsh for \$80,100,000.00 -- \$80 million for ACE’s premium and \$100,000 for Marsh’s fee. Throughout the days before the loss portfolio agreement was finalized, Marsh never disclosed that they were negotiating a hidden contingency payment from ACE, or that ACE was in poor financial condition.

114. Despite the requirements that only the State pay Marsh and that the premium not include broker fees, by December 3, 2001, Marsh agreed to take an additional \$50,000 on the State's loss portfolio deal. Additionally, Marsh's payment was expressly conditioned on Marsh signing a confidentiality agreement to prevent disclosure of the secret fee. Wrote the same Marsh broker who had originally "planted the seed" with ACE: "ACE advised that they were unwilling to pay the invoice (I assume the invoice they are referring to is the contingency that I instructed you to process) until we agreed to their requested confidentiality agreement. As you will note below, the agreement is done and I am sending them a signed document. There should be no further delay in the contingency payment."

115. Finally, flatly contradicting its own internal records, and in an obvious effort to cover-up the paper trail created by their own records, a handwritten note was inserted into Marsh's internal files claiming that the "[d]iscussion with ACE on incentive/contingency payment commenced after deal was completed/bound/paid."

## **VI. CAUSES OF ACTION**

### **First Count: Breach of Connecticut Antitrust Act (Conn. Gen. Stat. § 35-32 et seq.)**

1-115. Paragraphs 1 through 115 of the Amended Complaint are hereby repeated and realleged as Paragraphs 1 through 115 of the First Count as if fully set forth herein.

116. Pursuant to Conn. Gen. Stat. §§ 35-32(a) and (c) and § 35-35, Richard Blumenthal, Attorney General of the State of Connecticut, brings this action on behalf of the State of Connecticut and the People of the State of Connecticut for violations of the Connecticut

Antitrust Act, and as *parens patriae* on behalf of persons residing in the State of Connecticut who were damaged by the defendants' conduct as alleged above and for damages sustained by the general economy of the State of Connecticut and its political subdivisions.

117. Marsh entered into contracts and agreements and engaged in a corrupt, unfair, and anti-competitive conspiracy with various insurance companies around the United States and overseas to submit or cause to be submitted collusive, fraudulent, non-competitive, and rigged bids for the sale and placement of insurance in Connecticut and throughout the United States.

118. Marsh entered into contracts and agreements and engaged in a corrupt, unfair, and anti-competitive conspiracy with various insurance companies around the United States and overseas to cause insurance companies to refrain from submitting genuine, competitive bids for the sale and placement of insurance in Connecticut and throughout the United States.

119. Marsh entered into contracts and agreements and engaged in a corrupt, unfair, and anti-competitive conspiracy with various insurance companies around the United States and overseas to raise prices and premiums for the sale and placement of insurance in Connecticut and throughout the United States.

120. Marsh's actions as alleged herein violate Conn. Gen. Stat. §§ 35-26 and 35-28 because they have the purpose and/or effect of unreasonably restraining trade and commerce within the State of Connecticut and throughout the United States.

121. Marsh's actions as alleged herein have caused loss and damage, and threaten to continue to cause loss and damage, to the State of Connecticut, persons residing in the State of

Connecticut, and to the general welfare and economy of the State of Connecticut and its political subdivisions.

**Second Count: Breach of the Connecticut Unfair Trade Practices Act**  
**(Conn. Gen. Stat. § 42-110a et. seq.)**

1-121. Paragraphs 1 through 121 of the Amended Complaint are hereby repeated and realleged as Paragraphs 1 through 121 of the Second Count as if fully set forth herein.

122. At all times relevant to this Amended Complaint Marsh was engaged in the trade or commerce of insurance brokerage and consulting services in the State of Connecticut.

123. By engaging in the acts and practices alleged herein, Marsh made or caused to be made, directly or indirectly, explicitly or by implication, representations which are material, reasonably interpreted, false and likely to mislead, including, but not limited to, the following:

- a. that the Marsh brokerage fee, which was being paid with taxpayer funds, would be only \$100,000 when, in fact, it was not;
- b. that Marsh would act as a fiduciary solely for the State's interest when, in fact, it would not; and
- c. that ACE was a bona fide candidate that had been recommended solely on its qualifications when, in fact, it had not.

124. By engaging in the acts and practices alleged herein, Marsh made omissions to the State that they had a duty to disclose by virtue of Marsh's fiduciary and contractual obligation to the State and Marsh's statements to the State concerning certain topics including:

- a. that Marsh would receive a hidden fee amounting to a kick-back from ACE in return for ACE's selection as the State's insurer;
- b. that ACE had material issues related to its financial stability that might affect its ability to perform the State's contract;
- c. that ACE had material issues related to its financial health that might affect the State's decision to award them the workers' compensation contract; and
- d. that the price and/or terms of coverage of the State's loss portfolio agreement with ACE might be increased by a concealed payment to Marsh.

125. Marsh's acts and practices alleged herein are oppressive or unscrupulous and violated the public policy of the State of Connecticut, including, but not limited to:

- a. the public policy prohibiting violations of the trust, confidence, and duties owed within a fiduciary relationship;
- b. the public policy embodied in Conn. Gen. Stat. § 38a-815 et seq. prohibiting misrepresentations of the terms of insurance and omissions and/or false statements in the course of the sale of insurance products;
- c. rigging bids in the sale and placement of insurance to Connecticut consumers and consumers throughout the United States in violation of Connecticut and U.S. law;
- d. soliciting and transmitting to its clients fraudulent "B-quotes;"

- e. breaching their fiduciary duties to their clients by soliciting and accepting secret back-door kick backs from insurers in return for steering Marsh clients to purchase their insurance from a favored insurer;
- f. artificially inflating insurance premium prices by folding their back-door payments into the premiums paid by their clients and arbitrarily setting the premium prices higher than the market would have produced in a free and open competition;
- g. not informing their clients of genuine and bona fide quotes received for their clients' insurance placements and intentionally restraining insurers from submitting such quotes;
- h. refusing to deal with insurers who would not participate in their corrupt system of hidden commissions and bid rigging;
- i. inducing a person with a state contract to give up a part of the compensation to which that person is entitled by use of force, intimidation, or threat in violation of Conn. Gen. Stat. § 53a-161; and
- j. receiving a benefit from another person without the consent of Marsh's employer or principal with the agreement or understanding that such benefit would influence Marsh's conduct in relation to its employer's or principal's affairs in violation of Conn. Gen. Stat. § 53a-161.

126. Marsh's acts and practices as alleged herein have been and are unethical, oppressive and unscrupulous, and cause substantial injury.

127. Marsh knew or should have known that their conduct alleged herein violated Conn. Gen. Stat. § 42-110b.

128. Marsh's acts or practices alleged herein violate § 42-110b-18(e) of the Regulations of Connecticut State Agencies, because they misrepresented the nature, characteristics, benefits and qualities of the services provided by Marsh.

129. Marsh's acts or practices alleged herein constitute unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b.

**Third Count: Breach of Contract**

1-115. Paragraphs 1 through 115 of the Amended Complaint are hereby repeated and realleged as Paragraphs 1 through 115 of the Third Count as if fully set forth herein.

116. By all of the foregoing, Marsh breached its contract with the State that Marsh only be paid \$100,000 for its services to the State.

117. By all of the foregoing, the State of Connecticut has been damaged.



## **PRAYER FOR RELIEF**

WHEREFORE, the State of Connecticut requests the following relief:

### **As to the First Count:**

1. A finding that by the acts alleged herein Marsh engaged in the unfair and unreasonable restraint of trade or commerce within the State of Connecticut in violation of the Connecticut Antitrust Act;
2. Treble damages pursuant to Conn. Gen. Stat. § 35-35;
3. An injunction pursuant to Conn. Gen. Stat. §§ 35-32(a) and 35-34 enjoining Marsh from engaging in any acts that violate the Connecticut Antitrust Act, including, but not limited to, the corrupt, unfair, and anticompetitive acts alleged herein;
4. Civil penalties of \$250,000 pursuant to Conn. Gen. Stat. § 35-38 for each and every violation of the Connecticut Antitrust Act; and
5. Such other relief as the Court deems just and equitable.

### **As to the Second Count:**

1. A finding that by the acts alleged herein Marsh engaged in unfair and deceptive acts and practices in the course of trade or commerce within the State of Connecticut in violation of the Connecticut Unfair Trade Practices Act;
2. An injunction pursuant to Conn. Gen. Stat. § 42-110m enjoining Marsh from engaging in any acts that violate the Connecticut Unfair Trade Practices Act, including, but not limited to, the unfair and deceptive acts and practices acts herein;

3. An injunction pursuant to Conn. Gen. Stat. § 42-110m enjoining Marsh from operating a Global Broking unit or similar entity as complained of herein;
4. An order pursuant to Conn. Gen. Stat. § 42-110m requiring that Marsh submit to an accounting to determine:
  - a. the amount of improper bonuses and commissions paid to Marsh; and
  - b. the amount Marsh improperly inflated insurance premium charges to its clients.
5. An order pursuant to Conn. Gen. Stat. § 42-110o directing Marsh to pay a civil penalty of \$5,000 for each and every willful violation of the Connecticut Unfair Trade Practices Act;
6. An order pursuant to Conn. Gen. Stat. § 42-110m directing Marsh to pay restitution;
7. An order pursuant to Conn. Gen. Stat. § 42-110m directing Marsh to disgorge all revenues, profits, and gains achieved in whole or in part through the unfair and/or deceptive acts or practices complained of herein;
8. An order pursuant to Conn. Gen. Stat. § 42-110m directing Marsh to pay reasonable attorneys' fees to the State;
9. Costs of suit; and
10. Such other relief as this Court deems just and equitable.

As to the Third Count:

1. Compensatory damages;
2. Such other relief as this Court deems just and equitable.

Plaintiff State of Connecticut hereby demands a trial by jury on all issues and causes of action so triable.

Dated at Hartford, Connecticut, this \_\_\_\_ day of September, 2005.

**PLAINTIFF**  
**STATE OF CONNECTICUT**

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RICHARD BLUMENTHAL  
ATTORNEY GENERAL

By:

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Michael E. Cole  
Chief, Antitrust Department  
Matthew J. Budzik, Juris # 423926  
Robert D. Snook  
Assistant Attorneys General  
Antitrust Department  
55 Elm Street, P.O. Box 120  
Hartford, CT 06141-0120  
Tel. # 860/808-5040

DOC. NO. -FST-CV-05-4004360-S (X05)

-----X  
STATE OF CONNECTICUT

Plaintiff,

v.

MARSH & McLENNAN  
COMPANIES, INC., MARSH, INC.,  
MARSH & McLENNAN, INC.,  
MARSH USA RISK SERVICES, INC.  
d/b/a MARSH USA, INC.

Defendants.

-----X

SUPERIOR COURT

JUDICIAL DISTRICT OF STAMFORD  
AT STAMFORD

COMPLEX LITIGATION DOCKET

SEPTEMBER 21, 2005

**AMOUNT IN DEMAND**

The amount, legal interest or property in demand is \$15,000.00 or more, exclusive of  
interest and costs.

**PLAINTIFF  
STATE OF CONNECTICUT**

BY:

\_\_\_\_\_  
Michael E. Cole  
Chief, Antitrust Department  
Matthew J. Budzik, Juris # 423926  
Robert D. Snook  
Assistants Attorneys General  
Antitrust Department  
55 Elm Street, P.O. Box 120  
Hartford, CT 06141-0120  
Tel. #: 860/808-5040